

6294

## SECURITY AGREEMENT

RECORDATION NO. \_\_\_\_\_ Filed &amp; Recorded

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THIS AGREEMENT made this 26th day ~~INTERSTATE~~ <sup>INTERNATIONAL</sup> ~~COMMERCE~~ <sup>COMMISSION</sup> 1971, by and between BARNETT BANK OF JACKSONVILLE, NATIONAL ASSOCIATION, (the "Secured Party") and CENTURY INDUSTRIES (the "Debtor"), a joint venture of Shands & Baker, Inc. and Florida Mining and Materials Corp., both Florida corporations, whose post office address is P. O. Box 4667, Jacksonville, Fla. 32201

## W I T N E S S E T H

That in consideration of the Secured Party making a loan to the Debtor in the principal amount of \$125,000, evidenced by and payable with interest in accordance with a promissory note of the Debtor ("Note"), a copy of which is attached hereto as Exhibit A. and in order to secure the payment, when due, of the sums owing under the Note and such other sums as may hereafter become secured by this instrument in accordance with the terms hereof, the Debtor hereby gives the Secured Party a security interest (the "Security Interest") in the Goods described below and in all parts, accessories, attachments, additions, replacements and accessions and in all proceeds thereof in any form (the "Collateral"):

27 railroad hopper cars A.A.P. Nos. HMFY  
11-37

And the parties hereto hereby agree and covenant as follows:

1. Indebtedness Secured. This agreement and the security interest created by it secures payment of all indebtedness of every kind owing by the Debtor to the Secured Party whether now existing or hereafter incurred, direct or indirect,

and whether the indebtedness is from time to time reduced and thereafter increased or entirely extinguished and thereafter reincurred (the "Indebtedness"). The Indebtedness includes any sums advanced and any expenses incurred by the Secured Party pursuant to this agreement.

2. Warranties of Debtor. The Debtor warrants and so long as this agreement continues in force shall be deemed continuously to warrant that: (a) the Debtor is the owner of the Collateral free of all security interests or other encumbrances, except the Security Interest; (b) the Debtor is authorized to enter into the Security Agreement; (c) the Collateral is used or bought for use primarily in business or professional operations.

3. Covenants of Debtor. As long as any Indebtedness remains unpaid the Debtor:

(a) will defend the collateral against the claims of all other persons; will keep the Collateral free from all security interests or other encumbrances, except the Security Interest; and will not sell, transfer, lease, or otherwise dispose of any of the Collateral or any interests therein without the prior written consent of the Secured Party;

(b) will not remove the Collateral from the state without the written consent of the Secured Party; will notify the Secured Party promptly in writing of any change in the Debtor's address from that specified above; and will permit the Secured Party or its agents to inspect the Collateral;

(c) will keep the Collateral in good condition and repair and will not use the Collateral in violation of any provisions of this Security Agreement, of any applicable

statute, regulation or ordinance or of any policy of insurance insuring the Collateral;

(d) will execute and deliver to the Secured Party such financing statements and other documents, pay all costs including costs of title searches and filing financing statements and other documents in any public offices requested by the Secured Party, and take such other action as the Secured Party may deem advisable to perfect the Security Interest created by this agreement;

(e) will pay all taxes, assessments and other charges of every nature which may be levied or assessed against the Collateral; will insure the Collateral against risks by obtaining policies (none of which shall be cancellable without at least 10 days notice to the Secured Party) in coverage, form and amount and with companies satisfactory to the Secured Party, and at Secured Party's request will deliver each policy or certificate of insurance therefor to the Secured Party;

(f) will prevent the Collateral or any part thereof from being or becoming an accession to other goods not covered by the Security Agreement;

(g) will prevent the Collateral or any part of the Collateral from becoming a fixture; and

(h) if any certificate of title may be issued with respect to any of the Collateral, the Debtor will cause the Secured Party's interest under this agreement to be noted on the certificate and will deliver the original certificate to the Secured Party.

#### 4. Default.

(a) Any of the following shall constitute an event of default:

(i) non-payment when due whether by acceleration or otherwise of the principal of or interest on any Indebtedness, time being of the essence, or failure by the Debtor to perform any obligations under this agreement or under any other agreement between the Debtor and the Secured Party;

(ii) death or incompetency of the Debtor;

(iii) filing by or against the Debtor of a petition in bankruptcy or for reorganization under the Bankruptcy Act or for an arrangement under the Bankruptcy Act;

(iv) making a general assignment by the Debtor for the benefit of creditors; the appointment of a receiver or trustee for the Debtor or for any of the Debtor's assets; or the institution by or against the Debtor of any kind of insolvency proceedings or any proceeding for the dissolution or liquidation of the Debtor;

(v) the occurrence of any event described in paragraph 4(a)(ii), (iii) or (iv) hereof with respect to any indorser or guarantor or any party liable for payment of any Indebtedness; or

(vi) material falsity in any certificate, statement, representation, warranty or audit at any time furnished to the Secured Party by or on behalf of the Debtor or any indorser or guarantor or any other party liable for payment of any indebtedness, pursuant to or in connection with the Security Agreement or otherwise (including warranties in this agreement) and including any omission to disclose any substantial contingent or liquidated liabilities or any

material adverse change in fact disclosed by any certificate, statement, representation, warranty or audit furnished to the Secured Party.

(b) The Secured Party may declare all or any part of the Indebtedness to be immediately due without notice upon the happening of any event of default or if the Secured Party in good faith believes that the prospect of payment of all or any part of the Indebtedness or the performance of the Debtor's obligations under this agreement or any other agreement now or hereafter in effect between the Debtor and the Secured Party is impaired. This paragraph is not intended to affect any rights of the Secured Party with respect to any Indebtedness which may now or hereafter be payable on demand.

(c) Upon the happening of any event of default the Secured Party's rights with respect to the Collateral shall be those of a secured party under the Uniform Commercial Code and any other applicable law from time to time in effect. The Secured Party shall also have any additional rights granted herein and in any other agreement now or hereafter in effect between the Debtor and the Secured Party. If requested by the Secured Party the Debtor will assemble the Collateral and make it available to the Secured Party at a place to be designated by the Secured Party.

(d) The Debtor agrees that any notice by the Secured Party of the sale or disposition of the Collateral or any other intended action hereunder, whether required by the Uniform Commercial Code or otherwise, shall constitute reasonable notice to the Debtor if the notice is mailed by regular or certified mail, postage prepaid, at least five

days before the action to the Debtor's address as specified in this agreement or to any other address which the Debtor has specified in writing to the Secured Party as the address to which notices shall be given to the Debtor.

(e) The Debtor shall pay all costs and expenses incurred by the Secured Party in enforcing this Security Agreement, realizing upon any Collateral and collecting any Indebtedness, including a reasonable attorney's fee whether suit is brought or not.

5. Miscellaneous.

(a) The Debtor authorizes the Secured Party at the Debtor's expense to file any financing statement or other documents relating to the Collateral (without the Debtor's signature thereon) which the Secured Party deems appropriate, and the Debtor appoints the Secured Party as the Debtor's attorney-in-fact to execute any such financing statement or other documents in the Debtor's name and to perform all other acts which the Secured Party deems appropriate to perfect and to continue perfection of the Security Interest under any applicable laws in effect from time to time.

(b) The Debtor authorizes the Secured Party to collect and apply against the Indebtedness any refund of insurance premiums or any insurance proceeds payable on account of the loss or damage to any of the Collateral and appoints the Secured Party as the Debtor's attorney-in-fact to indorse any check or draft representing such proceeds or refund.

(c) (1) As further security the Debtor grants to the Secured Party a security interest in all property of the Debtor which is or may hereafter be in the Secured Party's possession in any capacity including all monies

owed or to be owed by the Secured Party to the Debtor; and with respect to all of such property, the Secured Party shall have the same rights as it has with respect to the Collateral. (ii) Without limiting any other right of the Secured Party whenever the Secured Party has the right to declare any Indebtedness to be immediately due and payable (whether or not it has so declared), the Secured Party may set off against the Indebtedness all monies then owed to the Debtor by the Secured Party in any capacity whether due or not and the Secured Party shall be deemed to have exercised its right to set off immediately at the time its right to such election accrues.

(d) Upon the Debtor's failure to perform any of its duties hereunder the Secured Party may, but it shall not be obligated to, perform any of such duties and the Debtor shall forthwith upon demand reimburse the Secured Party for any expense incurred by the Secured Party in doing so.

(e) No delay or omission by the Secured Party in exercising any right hereunder or with respect to any Indebtedness shall operate as a waiver of that or any other right, and no single or partial exercise of any right shall preclude the Secured Party from any other or further exercise of any other right or remedy. The Secured Party may cure any default by the Debtor in any reasonable manner without waiving the default so cured and without waiving any other prior or subsequent default by the Debtor. All rights and remedies of the Secured Party under this agreement, under the Uniform Commercial Code and under any other applicable laws in effect from time to time, shall be deemed cumulative.

(f) The Secured Party shall have no obligation to take and the Debtor shall have the sole responsibility for taking any steps to preserve rights against all prior parties to any instrument or chattel paper in the Secured Party's possession as proceeds of the Collateral. The Debtor waives notice of dishonor and protest of any instrument constituting collateral at any time held by the Secured Party on which the Debtor is in any way liable and waives notice of any other action taken by the Secured Party.

(g) The rights and benefits of the Secured Party under this agreement shall, if the Secured Party agrees, inure to any party acquiring an interest in the Indebtedness or any part thereof.

(h) The terms "Secured Party" and "Debtor" as used in this agreement include the heirs, personal representatives, and successors or assigns of those parties.

(i) This agreement may not be modified or amended nor shall any provision of it be waived except by a written instrument signed by the Debtor and by an authorized officer of the Secured Party.

(j) This agreement shall be construed under the Uniform Commercial Code and any other applicable laws in effect from time to time.

(k) This Security Agreement is a continuing agreement which shall remain in force until the Secured Party shall actually receive written notice of its termination and thereafter until all of the Indebtedness contracted for or created before receipt of the notice and any extensions or renewals of that Indebtedness (whether made before or after receipt of the notice) together with all



interest thereon both before and after the notice  
shall be paid in full.

IN WITNESS WHEREOF the parties hereto have executed  
these presents on the date first above written.

Signed, sealed and  
delivered in the  
presence of:

[Signature]  
[Signature]  
As to Secured Party

BARNETT BANK OF JACKSONVILLE,  
NATIONAL ASSOCIATION

By [Signature] (SEAL)  
[Signature]

CENTURY INDUSTRIES  
By Its Joint Venturers

SHANDS & BAKER, INC.

By [Signature] (SEAL)

[Signature]  
[Signature]  
As to Shands & Baker, Inc.

FLORIDA MINING & MATERIALS CORP.

By [Signature] (SEAL)  
President

[Signature]  
As to Florida Mining &  
Materials Corp.

STATE OF  
COUNTY OF

On this \_\_\_\_\_ day of \_\_\_\_\_, 1971, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ OF BARNETT BANK OF JACKSONVILLE, NATIONAL ASSOCIATION, that the seal affixed to the foregoing instrument is the corporate seal of said national association, that said instrument was signed and sealed on behalf of said national association by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said national association.

Constantine A. Douglas  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

Notary Public, State of Florida at Large  
My commission expires July 10, 1974

STATE OF Florida  
COUNTY OF Duval

On this 26th day of July, 1971, before me personally appeared Edward L. Baker, to me personally known, who being by me duly sworn, says that he is the President of SHANDS & BAKER, INC., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

N. Everett Long  
Notary Public, State of Florida

My Commission Expires:

Notary Public, State of Florida at Large  
My commission expires Jan. 3, 1972

STATE OF Florida  
COUNTY OF Hernando

On this 27 day of July, 1971, before me personally appeared T. E. Bronson, to me personally known, who being by me duly sworn, says that he is the President of FLORIDA MINING & MATERIALS CORP., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

James J. Sagan  
Notary Public, State of \_\_\_\_\_

My Commission Expires:

Notary Public, State of Florida at Large  
My commission expires Dec 13, 1972  
801 E. 1st St., Suite 100, Tampa, FL

PROMISSORY NOTE

\$125,000.00

Jacksonville, Florida

26 July 1971

FOR VALUE RECEIVED, the undersigned, CENTURY INDUSTRIES (hereinafter "Century"), a joint venture of Shands & Baker, Inc. and Florida Mining & Materials Corp. both Florida corporations, hereby promises to pay to the order of BARNETT BANK OF JACKSONVILLE, NATIONAL ASSOCIATION the principal sum of ONE HUNDRED TWENTY-FIVE THOUSAND DOLLARS (\$125,000.00) with interest thereon (computed on the basis of a 360-day year of twelve 30-day months) from the date hereof until the date of maturity at the rate of 1/2 of 1% above the rate charged by the Chemical Bank of New York, New York, New York, for prime commercial loans to industrial companies, provided that such rate shall not at any time be less than 6% per annum nor exceed 9% per annum. The prime rate existing on the first day of each month shall determine the interest rate to be paid by Century on this Note during that month. This Note shall be payable in twenty equal quarter annual installments of \$6,250.00 each, together with interest at the rate aforesaid upon the unpaid balance, the first such installment being due October 30, 1971, and successive installments on January 30, April 30, July 30, and October 30 each year until the loan is paid in full. All payments will be applied first to interest due and then to principal. After default interest shall accrue at 10% per annum. All payments of principal and interest are to be made at the office of the payee in Jacksonville, Florida, in such coin or currency of the United States of America as is at the time of payment legal tender for the payment of public and private debts.

This Note is made pursuant to, and is entitled to the benefits of a letter agreement dated 26 July 1971 and a security agreement dated 26 July 1971 (hereinafter "Agreements"), between Century and the above-named payee. Reference is made to these Agreements for a statement of the rights of the holder of this Note and rights and limitations of rights of Century.

In case an Event of Default, as defined in the Agreements, shall occur and be continuing, the principal amount of this Note together with accrued interest thereon may be declared due and payable in the manner and with the effect provided in the Agreements. After default the undersigned will pay all costs of collection incurred by holder including attorneys' fees.

CENTURY INDUSTRIES

By Edward L. Baker